IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5877 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

MOHAMMED IQBAL RAHIMBHAI MIRZATHRO'P.O.A. ABDUR RAZAK LATIF

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5877 of 2004

MR MTM HAKIM for Petitioner No. 1

MR DIPEN DESAI, Ld. AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 26/11/2004

ORAL JUDGEMENT

1. With the consent of the parties the matter is finally heard today. The short facts of the case are

that the petitioner had purchased the land admeasuring 0-19-22 hectare and 0-67-79 hectare and 5-25-86 hectare, bearing Revenue Survey No.506/2, 507 and 593 respectively of Village Limda, Taluka Vaghodia, District Vadodara as per the registered sale deed dated 15.5.1981. It appears that after the registered sale deed, the proceedings under Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Act") were initiated against the petitioner on the ground that the petitioner is not holding the other agricultural land and also on the ground that the land is not situated within the prescribed limits or area from the residence of the petitioner. The orders were passed under Section 84C of the Act initially for holding that the transaction is in breach and thereafter there was order for remand by the tribunal and ultimately on 24.11.2003 Mamlatdar and ALT passed the order, whereby he found that the transaction is not in breach of the provisions of Section 63 read with Section 84C of the Act and the show-cause notice for such purpose was withdrawn. A copy of the said order is produced on page 39 Annexure "D" of the petition.

2. It appears that in the meantime, the proceedings were initially under Section 65 of the Act by Dy. Collector for the land in question on the ground that the land remained uncultivated for a period of two years and more. The show-cause notice for initiation of the proceedings was issued to the original holder of the land one Chandubhai R. Patel from whom the petitioner had purchased the property, but though the notice was not even served upon Mr.Chandubhai R. Patel, the Deputy Collector proceeded on the basis of the record produced by Talati-cum-Mantri and Panchnama dated 10-7-2000 and on the basis of extract of Village Forms No.7 and 12 and ultimately held that the land is not used for cultivation and, therefore, the land was taken under the management of the State Government for a period of ten years. It is under these circumstances, the petitioner has approached this Court by the present petition.

3. Heard Mr.Hakim, learned Counsel for the petitioner and Mr.Desai, learned AGP for the respondent State.

4. Upon hearing of the learned Counsel appearing for the parties and upon the perusal of the record, it appears that even in the order passed by the Tribunal dated 31.12.2001, copy whereof is produced at Annexure "C", it has been recorded that the entry for transaction of registered sale deed was entered in the revenue record and was certified. Therefore, the revenue authority, in

any case, Talati-cum-Mantri of the concerned village Panchayat can be said to have knowledge regarding the factum of purchase of the land by the petitioner as per the registered sale deed dated 16.5.1981. In spite of the same, it is an admitted position that the show-cause notice has not bee issued to the petitioner, who is having right over the land in question. Therefore, the order passed by the Dy. Collector can be said to be on the face of it, in breach of principles of natural justice. It is well settled that the person who is affected by the order is required to be heard and the Scheme of Section 65 of the Act provides that the power is to be exercised by the Collector for taking away the management of the property of the holder of the land. It was obligatory on the part of the Deputy Collector i.e. Competent Authority to give opportunity of hearing to the petitioner. Further, the aforesaid aspect is coupled with the fact that even for earlier the holder of the land, at para 2 of the impugned order, it has been mentioned that the show-cause notice was sent by registered A.D. post, but the card of the acknowledgement has returned back with the endorsement that there is no such person staying in the Village Limda and second show-cause notice was issued through Mamlatdar, Vaghodia. The report was made that the notice could not be served since Mr.Chandubhai R. Patel is not staying in the Village. Therefore, it is also an admitted position that even the notice is not served to Mr.Chandubhai R. Patel who was the original holder of the land from whom the petitioner has purchased the property as per the registered sale deed dated 16.5.1981. Therefore, the order cannot be sustained in the eye of law on the ground that the show-cause notice is neither served upon the petitioner, nor served upon Mr.Chandubhai R. Patel, former holder of the land, from whom the petitioner purchased the property.

5. Mr.Hakim, learned Counsel for the petitioner also raised the contention that the Dy. Collector has proceeded only on the basis of extract of Village Forms No.7 and 12 and Panchnama prepared behind the back of the petitioner and he also submitted that there is no examination on the aspects by the Dy. Collector as to whether the cultivation could not be made on the circumstances beyond the control of the petitioner or not and, therefore, he submitted that the order passed by the Dy. Collector deserves to be quashed and set aside.

6. Mr.Desai, learned AGP submitted that it is not even the case of the petitioner that the cultivation was made and, therefore, he submitted that the petitioner

cannot raise such contention and he also submitted that in case this Court finds that the Dy. Collector has not properly followed the procedure, the matter may be remanded back to the Dy. Collector for reconsideration of the case.

7. In this regard, if the matter is examined it appears that the Dy. Collector has proceeded on the basis of extract of village Forms No.7 and 12 from 1989-1990 to 1999-2000 and also the Panchnama prepared by Talati-cum-Mantri dated 10.7.2000.

Section 65(1) and (1)(A) of the Act, which is relevant for the purpose of this petition reads as under:

> "65(1) If it appears to the [State] Government that for any two consecutive years, any land has remained uncultivated [or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control] the [State] Government may, after making such inquiry as it thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.
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> (1A) The assumption of management of land under sub-section (1) on the ground that the full and efficient use of the land has not been made for the purpose of agriculture shall be for such period as the State Government may, from time to time fix, so, however, that such period shall not exceed ten years in the aggregate."

8. On true construction of Section 65 of the Act, it appears that the State Government is clothed with the power to declare that the management of such land shall stand assumed if it appears to the State Government that for any two consecutive years the land has remained uncultivated or full and affective use of the land is not made for the purpose of agriculture, through the default of the holder or any other cause whatsoever, not beyond his control. Further before such declaration, an inquiry is required to be made and thereafter only the declaration can be made for taking management of the land in question or assuming the management of the land. The scope of the inquiry would be as to whether the land has remained uncultivated or whether there is no full or effective use of the land for the purpose of agriculture, but while holding the inquiry it is also obligatory on the part of the authority to inquire and to arrive at an

finding as to whether such non-cultivation or non-use of the land to the fullest extent is for the reason beyond the control of the holder of the land or not. Therefore, merely because there is non-cultivation of the land for two consecutive years or merely because there is no full and effective utilization of the land for agricultural purpose for a period of two years, itself is not sufficient for assuming the management of the land, but power may be exercised by the State Government only if it finds that such has happened because of voluntary action or inaction on the part of the holder of the land but not on the ground or cause beyond the control of the holder of the land.

Further, for the scope and ambit of the inquiry under Section 65 of the Act, this Court in the case of "Sanjaybhai Induprasad Bhatt v. State of Gujarat", reported in 2000(3) GLH, 768 has held at para 9, inter alia, as under:

"19. ... The question is that inquiry which has been contemplated under the provisions of Section 65 it has to be understood in light of the principles of the natural justice. Inquiry cannot be considered as formal or merely empty formality for arriving at a particular conclusion. While exercising the powers of the State Government by the Deputy Collector, he should have hold proper inquiry because while exercising the powers under Section 65, especially when the Deputy Collector is deciding the right of the petitioner or to decide or adjudicate the question whether the land in question has remained without cultivation or not. That determination of this issue, the Deputy Collector has to consider various aspects keeping in mind the relevant provisions of Section 65 of the Act. It is noted that Section 65 clearly provides that if the land in question remains uncultivated on the ground that it is beyond the control of the petitioner or the land holder, it cannot be considered to be a ground for initiating the inquiry and to passe the order under Section 65. So these are the reasons which were required to be kept in mind while exercising the powers under Section 65 of the Act. The inquiry initiated against the land holders who are the owners of the land and result of the inquiry is to deprive the person from the land in question because the land vested with the Government. Therefore, when any inquiry if it is

ultimately likely to result into deprivation of livelihood of the person/s then it is the responsibility of the authority to give just, proper, adequate and reasonable effective opportunity to the persons against who the inquiry has been initiated by the Deputy Collector. Inquiry which is suggested under Section 65, it is not exparte inquiry but it requires to give opportunity to the persons who is the holder of the land in question. If there no provision is made under the statute about inclusion of principles of natural justice even then the same has to be read impliedly and during the course of inquiry under the relevant provisions, principles of natural justice should be followed in initiating such proceedings."

9. Not only that but even in respect to the report prepared by RTS Team vis-a-vis the observance of the principles of natural justice, it has been observed by this Court in the said decision at para 17, inter alia, as under:

"17. ... The land holder in absence of report of the RTS team and the material and documents on which the reliance was placed, and the Deputy Collector wanted to have answer or explanation of show cause notice from the land holder. Thus it is a clear violation of principles of natural justice because how the land holder can defend or give explanation of the show cause notice effectively in absence of the report of the RTS team along with material and documents which have been collected by the RTS team behind the back of land holder. Therefore, if any reply or explanation even if it is tendered by the land holder, that cannot be considered to be an effective and reasonable opportunity has been given by the Deputy Collector. That one another important aspect which requires to be noted here is that after reasonable reply from the land holder, the Deputy Collector had fixed the matter for hearing and calling the land holder to remain personally present in such inquiry and at that time merely right of representation has been given to the land holder but even at that occasion also, a copy of the report prepared by RTS team along with documents and material were not supplied to the land holder. Not only that but even during the course of inquiry, the Deputy Collector has not examined any persons either

Talati cum Mantri or Mamlatdar to prove the report and materials as well as the documents which were collected by the RTS team in inquiry. No right of cross examination has been given to the land holder and merely right of oral representation has been given to the land holder during the course of inquiry and therefore, the Deputy Collector has decided the matter after relying the report which has been prepared by RTS team along with the material and document which were annexed with the report and considering the oral representation of the land holder come to the conclusion that Section 65 has been violated. Such procedure to my mind is totally contrary to the principles of natural justice inasmuch as the decision arrived by the Deputy Collector to deprive the persons of their respective lands in question which are livelihood of the land holder, therefore, the right to life and right to livelihood are required to be protected before passing any adverse orders and reasonable, proper effective opportunity is minimum barest requirements of principles of natural justice. The said procedure apparently unreasonable and contrary to the safeguard which has been provided under the principles of natural justice. ..."

10. Therefore, it appears that it is obligatory on the part of the competent authority to supply copy of the report and also for allowing the person to give opportunity for cross-examine in case such request is so made. In case of "Khodaji Mangaji v. State of Gujarat" in SCA No.3802/2004 with SCA No.3803/2004, this Court in its decision dated 21-9-2004 in a case where the action was taken by the revenue authority on the basis of extract of Village Forms No.7 and 12 holding that in Village Form No.7 and 12 the cultivation is shown by the person other than the owner and, therefore, there is a breach of the condition and/or transfer of the land is made consequently resulting into the breach of conditions of new tenure land and the land was ordered to be forfeited. In the said decision at para 6 it was, inter alia, observed as under:

"6. ...When it is a matter pertaining to taking away the property of any citizen mere reliance upon revenue record of village Form No.7/12 can not be said as sufficient proof for breach of condition. As such, when such aspect is denied by the holder of the property, it must be examined as to whether concerned

> Talati-cum-Mantri made such entry on the basis of hearsay or on the basis of so called material which can not be relied upon or on some extraneous consideration and, if yes, then such entry in village Form No.7/12 can not assume value authorising for concluding the breach and consequential forfeiture of the property. There must be cogent, authenticated and lawful material for altering the rights in immovable properties for such breach. Moreover, even if it is established that there is a breach, and if the authority is to take action of forfeiture, then it should also be examined as to whether the breach was due to circumstances beyond the control of the holder of the property and, if yes, then in that case, harsh action of forfeiture of the property would not be required but the authority will have to consider the matter for imposition of fine/penalty considering the gravity of the breach, including the period for such breach. If it is a matter resulting into action of forfeiture of land, then principles of natural justice to its full extent considering the facts and circumstances of the case will be required to be followed. Therefore, only entry in village Form No.7/12 can not be said as sufficient material attracting the power of authority for forfeiture of the land to the State Government."

11. Therefore, if the matter is examined accordingly, so far as the present case is concerned, as observed earlier, Section 65 itself enjoins the duty upon the authority to arrive at a finding as to whether non-cultivation or non-use was for the circumstances beyond the control of the holder of the land. It is apparent that neither there is inquiry nor finding on such aspect by the authority while passing the impugned order. Not only that but even the reliance placed upon the revenue record of Village Forms No.7 and 12 and Panchnama prepared by Talati-cum-Mantri is without examining the aspects regarding the genuineness on the basis of which the entry was made in the Village Forms No.7 and 12 by Talati-cum-Mantri and is also without giving opportunity to the petitioner to meet with the panchnama prepared behind back of the petitioner. Therefore, the exercise of power by the Dy. Collector in the impugned order is without following the mandatory procedure and arbitrary and, therefore, cannot be sustained in the eye of law.

12. In view of the above, the impugned order passed by the Dy. Collector Annexure "A" is quashed and set aside. However, it would be open to the Dy. Collector, respondent No.2 herein to issue a fresh show-cause notice to the petitioner under Section 65 of the Act and to decide the matter in light of the observations made hereinabove and in accordance with law.

13. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

26.11.2004 (Jayant Patel, J.)

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